

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

IN RE

ALLAN MONTALBANO,
AKA A. P. MONTALBANO, JR.,
AKA ALLAN PERRY MONTALBANO,

DEBTOR.

CHAPTER 7

CASE NO. 15-75190 -ast

PLEASE TAKE NOTICE that upon the annexed affirmation of Nicole Kolczynski, an associate of the law firm of Shapiro, DiCaro & Barak, LLC, Wells Fargo Bank, N.A. ("Movant") will move this Court as set forth below:

JUDGE: HON. Alan S. Trust

RETURN DATE & TIME: June 23, 2016 at 10:30 AM

COURTHOUSE: United States Bankruptcy Court
Alfonse M. D'Amato U.S. Courthouse
290 Federal Plaza
Central Islip, NY 11722

RELIEF REQUESTED: The proposed order will seek to vacate the automatic stay imposed by 11 U.S.C. § 362(a) with regard to the subject property generally described as 17 Donna Lane, Long Beach, NY 11561, pursuant to 11 U.S.C. § 362(d)(1) based upon the total debt due to Movant, resulting in Movant's lack of adequate protection

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, to the relief requested, must be served upon and received by Shapiro, DiCaro & Barak, LLC at their offices at 175 Mile Crossing Boulevard, Rochester, NY 14624 and filed with the Clerk of the United States Bankruptcy Court for the Eastern District of New York at United States Bankruptcy Court, Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722 no later than seven (7) days prior to the return date of this motion.

Dated: May 13, 2016
Rochester, New York



Nicole Kolczynski
Bankruptcy Attorney
Shapiro, DiCaro & Barak, LLC
Attorneys for Wells Fargo Bank, N.A.
175 Mile Crossing Boulevard
Rochester, NY 14624
Telephone: (585) 247-9000
Fax: (585) 247-7380

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS NOTICE IS REQUIRED BY THE PROVISIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT AND DOES NOT IMPLY THAT WE ARE ATTEMPTING TO COLLECT MONEY FROM ANYONE WHO HAS DISCHARGED THE DEBT UNDER THE BANKRUPTCY LAWS OF THE UNITED STATES.

TO: SERVICE LIST

UNITED STATES BANKRUPTCY COURT
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ALLAN MONTALBANO,
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AKA ALLAN PERRY MONTALBANO,

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CASE NO. 15-75190- ast

DEBTOR.

**AFFIRMATION IN SUPPORT OF
ENTRY OF AN ORDER GRANTING
RELIEF FROM THE AUTOMATIC STAY**

Nicole Kolczynski, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Eastern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am an associate with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Wells Fargo Bank, N.A. ("Movant"), a secured creditor of Allan Montalbano, aka A. P. Montalbano, Jr., aka Allan Perry Montalbano ("Debtor"). As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in support of the within request for an Order Granting Relief from the automatic stay, for cause, pursuant to 11 U.S.C. § 362(d)(1).

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. § 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Movant is a secured creditor of the Debtor pursuant to a note executed by Allan Montalbano ("Mr. Montalbano") on August 28, 2012, whereby Mr. Montalbano promised to repay the principal amount of \$560,000.00 plus interest to Vangaurd Funding, LLC (the "Note").

To secure the repayment of the Note, Mr. Montalbano and Jillian Montalbano granted Mortgage Electronic Registration Systems Inc., as nominee for Vangaurd Funding, LLC a mortgage, which was duly recorded in the Nassau County Clerk's Office on September 12, 2012 in Book 37699, Page 634 (the "Mortgage," Note and Mortgage, collectively, as the "Loan"), encumbering real property located at 17 Donna Lane, Lido Beach, NY 11561 (the "Property"). The Loan was assigned to Movant as memorialized by instrument dated December 11, 2015 and duly recorded on January 4, 2016 ("Assignment of Mortgage"). Copies of the Note, Mortgage, and Assignment of Mortgage are annexed hereto as **Exhibit "A"**.

5. Upon information and belief, the Debtor herein own(s) the Property.

6. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about November 30, 2015.

7. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Mortgage remains due for the March 1, 2016 payment and each subsequent payment thereafter.

8. The amount of delinquency due as of May 6, 2016 under the Mortgage is as follows:

3 Defaulted Monthly Payments at \$3,803.88 each	\$11,411.64
(March 2016 through May 2016)	
Total Delinquencies	\$11,411.64

9. A copy of the Relief from Stay-Real Estate and Cooperative Apartments ("Affidavit") is annexed hereto as **Exhibit "B"**.

10. Moreover, in view of the total debt due to Movant and in light of the Debtors failure to make payments, Movant is no longer adequately protected. The automatic stay must be vacated for cause pursuant to 11 U.S.C. § 362(d)(1).

11. As set forth in the Affidavit, as of May 6, 2016, the approximate debt due and owing to Movant equals \$529,305.00. The debt is accruing interest at a rate of 3.875% per annum.

12. Based upon the Debtor's Schedule A, the Property has an estimated fair value of approximately \$725,000.00. A copy of Debtor's Schedule A is annexed hereto as **Exhibit "C"**. As indicated in paragraph 11 herein above, the total debt to Movant equals \$529,305.00.

13. Upon information and belief, according to the Debtor's bankruptcy petition, there exists a second lien on this property in favor of Chase Home Equity Servicing in the amount of \$14,091.14 (the "Chase Lien"). *See* Schedule D, attached hereto as **Exhibit "D"**.

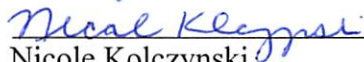
14. Movant, according to the laws of the State of New York and the terms and conditions of the Mortgage, desires to continue and/or commence foreclosure proceedings with respect to the Property.

15. The Debtor, Debtor's Attorney, the Chapter 7 Trustee and the Office of the United States Trustee have each been duly served with the within Notice of Motion, Affirmation, Exhibits and proposed Order Vacating Stay, as more fully set forth in the annexed affidavit of mailing.

16. No prior application has been made for the relief requested herein.

WHEREFORE, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) as to the aforementioned Property; allowing Movant, its agents, assigns or successors in interest, leave to foreclose the Mortgage secured by the subject Property; and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: May 13, 2016
Rochester, New York



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Shapiro, DiCaro & Barak, LLC
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